

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

XIAOBING Wang, et al.,  
Plaintiffs,  
v.  
INDIVIDUALS, PARTNERSHIPS, and  
UNINCORPORATED ASSOCIATIONS on  
SCHEDULE A, et al.,  
Defendants. }  
}  
Docket No. 22 C 2024  
Chicago, Illinois  
February 17, 2023  
9:15 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS - Motion Hearing  
BEFORE THE HONORABLE THOMAS M. DURKIN

## 11 || APPEARANCES:

12 For the Plaintiffs: MR. KENNETH A. NAZARIAN  
13 Barney & Karamanis, LLP  
14 Two Prudential Plaza  
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Chicago, Illinois 60601

15 For Defendants  
16 Joybuy and Joybuy  
17 Express:  
18 MS. NICOLE E. KOPINSKI  
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19  
20 For Defendant  
Meowsomerandoms: MR. BRIAN M. SWIFT  
21 AU LLC  
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22 ELIA E. CARRIÓN  
23 Official Court Reporter  
24 United States District Court  
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1 (Proceedings heard telephonically.)

2 THE CLERK: The next case is 22 CV 2024, Wang v. The  
3 Defendants Identified on Schedule A.

4 Could I please have the attorney present on behalf of  
5 the plaintiff state their name.

6 MR. NAZARIAN: Good morning, Your Honor.

7 Ken Nazarian on behalf of plaintiff.

8 THE CLERK: Is anyone present on behalf of any  
9 defendant?

10 MS. KOPINSKI: Nicole Kopinski on behalf of the  
11 Joybuy Marketplace, Defendant 281, Joybuy; Defendant 282,  
12 Joybuy Express.

13 MR. FENG: Wallace Feng, also for the Joybuy  
14 Marketplace.

15 MR. SWIFT: And good morning, Your Honor.  
16 Brian Swift on behalf of Defendant Meowsomerandoms.

17 THE COURT: All right. This is up on a motion for  
18 preliminary injunction. And I'm assuming, Mr. Nazarian, that  
19 people that are represented -- the parties represented are not  
20 the subject of your motion for preliminary injunction. Or am  
21 I incorrect?

22 MR. NAZARIAN: No, correct, Your Honor, none of the  
23 appearing defendants are part of the motion for preliminary  
24 injunction.

25 We're going to make sure that they -- those names are

1 left off of any Schedule A for the preliminary injunction.

2 THE COURT: Okay. Well, this case -- I'm disturbed  
3 about a couple of things that occurred in this case as  
4 you know from last week.

5 But just to go over the history. There was a  
6 temporary restraining order granted on April 20, 2022. It was  
7 extended. Ultimately, it expired in June, June 10th. And I  
8 entered a preliminary injunction on your request on  
9 August 4th. But the order presented to me -- even though this  
10 is a patent case, the order presented to me was for a  
11 trademark case. Obviously, a mistake. Mistake by you to give  
12 it to me; mistake by me to sign it. And I acknowledge that.

13 You then came in, in December on a motion for entry  
14 of a default judgment. In that motion for entry of default  
15 judgment, you represented that on August 2nd you served the  
16 defendants via email with copies of the amended complaint,  
17 sealed temporary restraining order, and summons, and that  
18 answers and motions under Rule 12 were due on August 23rd.

19 I accepted your representations, which I understood  
20 to be accurate, as they're required to be when you file a  
21 court document, that summonses had been issued. So I entered  
22 a default against all the defendants you asked for me to enter  
23 a default on because I understood they had all received a  
24 summons.

25 I denied your request for default judgment because

1 the request for damages of \$1 million was completely  
2 inadequate, unsupported by affidavit, and so I denied the  
3 request for default judgment without prejudice, but I did  
4 enter a default.

5 You then came in last week on a motion for default  
6 judgment. I again denied it without prejudice and said that  
7 the request for damages were completely unsupported. They  
8 were -- not completely unsupported; they were inadequate.

9 There was nothing about why \$1 million would be  
10 justified in your client's affidavit that I found adequate, at  
11 least, and you had said you'd be coming back on that. I  
12 vacated the preliminary injunction because it had been entered  
13 for a trademark case and so I vacated it and you're back today  
14 to seek a preliminary injunction, presumably with the correct  
15 proposed order for a patent case.

16 It was in looking further at this, though, to see if  
17 the parties had received notice of the preliminary injunction  
18 and had been properly brought into court in the first place  
19 that I found no evidence that summonses were issued by the  
20 clerk's office back when this case was filed some -- well,  
21 let's see -- the case filed in April of 2022.

22 And in reviewing the docket sheet through today, I  
23 found no evidence that the clerk's office has issued  
24 summonses, or -- or that summonses had been returned executed.

25 I assumed that was -- that summonses had been issued

1 based on your representation in the Document 42-1 that  
2 defendants had been served in August with copies of the  
3 amended complaint, sealed temporary restraining order, and  
4 summonses.

5 I asked my courtroom deputy to send you an email  
6 asking -- seeing if there was some problem where perhaps the  
7 docket was not accurate and summonses in fact had been issued  
8 by the clerk's office and then had been served and then filed  
9 by you as returned executed, which is what happens typically  
10 in these cases. "Typically," meaning every case I've had.

11 And your answer to her was that -- this is an email I  
12 believe last night: "Good afternoon, Emily. I apologize for  
13 the delay in getting back to you. I looked through our file  
14 and realized that the summons sent to the defendants was never  
15 filed with the Court. I've attached the summons to this  
16 email, and we'll raise it before the judge tomorrow to see how  
17 we should proceed."

18 The summonses you -- the summons that you returned to  
19 Emily is not a summons issued by -- at least doesn't show any  
20 notice -- any note as it being issued by the clerk's office.  
21 It doesn't have any of the signature or seal on the bottom  
22 that typically comes from the clerk's office. And in  
23 Schedule A cases, the "to" field, which is typically,  
24 you know, to defendant, whatever defendant's name is,  
25 according to the TR0, it should have been issued as

1       autocomponents999 and all other defendants identified in the  
2       complaint. And that was blank.

3                   So I'm puzzled. Maybe there's an explanation for  
4       this. And this is a good time for you to tell me.

5                   Did you ever get a summons in this case issued by the  
6       clerk's office?

7                   MR. NAZARIAN: Your Honor, based upon what we looked  
8       at, I don't believe that there was a summons issued by the  
9       clerk's office. I honestly don't know how it happened. The  
10      summons that we've sent out to defendants was apparently never  
11      seemingly issued by the clerk's office.

12                  I -- I don't know how it occurred. I -- I -- I -- I  
13      apologize to the Court for -- for that. It was never meant to  
14      be any type of misrepresentation. I had always thought that  
15      the defendants had been properly served in this case. Based  
16      upon what is the judge's -- Ms. Wall's email, I looked through  
17      the file. It was discovered that the summons itself had not  
18      been issued, that it had been sent out in that format, which I  
19      sent over to the -- to Ms. Wall.

20                  Obviously, this was a gross error. It should not  
21      have happened. And I -- I -- I apologize to the Court greatly  
22      on that -- those issues. I -- I -- I believe that it would be  
23      appropriate to vacate the default judgment and re-serve the  
24      defendants with the appropriate summons, if Your Honor would  
25      allow it, and to continue there -- thereafter.

1                   THE COURT: Well, the apology shouldn't be to me.  
2 The apology ought to be to the hundreds of defendants who were  
3 brought into court through notice of a complaint but not given  
4 a summons.

5                   The apology ought to be to all the defendants that  
6 had assets frozen; the apology ought to be to all the  
7 defendants, of there are many, that you voluntarily dismissed  
8 presumably because you settled with them; the apology ought to  
9 be to -- well, that's a start. There ought to be many others.  
10 And apologies don't do it.

11                  You're an experienced litigator. Summons have to  
12 be issued by the clerk's office to drag somebody into Court.  
13 It doesn't matter if they're a number of Chinese  
14 counterfeiters or an American corporation, General Motors.

15                  You bring people into court by getting a summons  
16 that's been issued by the clerk's office. That's the  
17 authority that allows you to bring someone to court, not just  
18 the filing of a complaint. A complaint is just a piece of  
19 paper.

20                  But to tell someone when they get that piece of paper  
21 that there is something behind it such as court authority to  
22 answer it, that's what a summons is. And you know this.  
23 You're an experienced litigator. I'm sure you've done it  
24 hundreds of times. You fill out the summons, you send it to  
25 the clerk's office, they issue it under their authority with a

1 signature and title and seal, and then they enter it on the  
2 docket that summonses have been issued.

3 And what I usually check, and I unwisely relied upon  
4 your representation, but I usually check to see if summonses  
5 were returned executed. It's so routine. It happens in  
6 every one of these Schedule A cases. It happens in every  
7 case. I don't know what we're up to -- you know, even this  
8 year, we get thousands of cases. This is what happens in  
9 these cases.

10 And I'm -- this case is stayed. Nothing more is  
11 happening on this case at this moment. I want to review this  
12 more closely. You're going to be coming into court -- into  
13 court, none of these conferences, because I want explanations  
14 on all this.

15 MR. NAZARIAN: Understood, Your Honor.

16 THE COURT: I don't know if -- I don't know if any of  
17 these -- stop your settlement discussions because they're  
18 being done under false pretenses right now. No more  
19 settlements, because you don't have authority of the Court to  
20 be doing it, because you don't have a lawfully issued summons.

21 And I'm a little concerned -- more than a little --  
22 about your representations to Ms. Wall -- I hope it was  
23 unintentional -- that you have -- you said you realized "the  
24 summons sent to defendant was never filed with the court."

25 That's the second step. The first step is getting a

1 summons issued by the Court. And that didn't happen. So  
2 maybe it's an ambiguity in your email, but I certainly hope  
3 you weren't misrepresenting anything in that regard, but --

4 MR. NAZARIAN: No, not -- not at all, Your Honor.  
5 That -- that was merely meant that it was not filed with the  
6 court for issuance.

7 THE COURT: All right. Well, this case is stayed.  
8 Nothing more happens. And don't fill out -- and I'm ordering  
9 you not to engage in settlement discussions with any remaining  
10 defendants. We'll see what happens with --

11 MR. NAZARIAN: Understood, Your Honor.

12 THE COURT: -- see what happens in the settlements  
13 that have already occurred.

14 We'll put out a minute order --

15 MS. KOPINSKI: Your Honor --

16 THE COURT: Go ahead. Who is this?

17 MS. KOPINSKI: On behalf of the Joybuy Marketplace  
18 defendants, Joybuy Marketplace does not concede that service  
19 was properly effected against it or that alternative service  
20 is proper against it, and -- and notes that we have been  
21 involved in this case since appearing in August.

22 We also note as a point of housekeeping, there is a  
23 status hearing set on the record pursuant to a docket entry  
24 for April.

25 THE COURT: We're going to issue a minute order.

1 I'll consult with my courtroom deputy so that it's consistent  
2 with my trial schedule so I don't interfere with the jury  
3 trial, for an in-court appearance on this case required for  
4 plaintiffs' counsel.

5 If any defense counsel want to come in, they're free  
6 to do so. You'll get notice of it. But -- in fact, you ought  
7 to come in too. I want to see what's been going on with this  
8 case behind the scenes.

9 I can't tell you how upset I am about this,  
10 Mr. Nazarian. This is not -- I rely -- as I said last time  
11 when I told you how I improvidently signed -- stupidly signed,  
12 quite frankly, an order that related to a trademark case when  
13 this was a patent case. And shame on me for doing that. It  
14 will never happen again. But it was based, in large part, on  
15 my faith in the representations attorneys make about these  
16 cases.

17 About every case, but especially these cases, because  
18 they almost become routine there's so many that are filed in  
19 the Northern District of Illinois. And whether defendants  
20 appear or not on the -- in the case, the same care has to be  
21 taken by a plaintiff as if they had an opponent that appeared  
22 and challenged the bona fides of the case; the proper  
23 procedure being used in the case.

24 And I rely upon plaintiffs' counsel, when the defense  
25 counsel won't test them on that, I rely upon the integrity and

1 professionalism of plaintiffs' counsel to make sure they do it  
2 correctly. That reliance was unfounded in this case.

3 And you'll get a minute order setting this for a  
4 status, and we'll go from there.

5 Anything else by plaintiff?

6 MR. NAZARIAN: Nothing, Your Honor. Just again, an  
7 apology to the Court. It was never my intention for any  
8 misrepresentations to be made to the Court.

9 THE COURT: Anything else from defendants?

10 All right. You'll get a minute order in the next few  
11 days setting it for a status. Thank you.

12 MR. NAZARIAN: Thank you, Your Honor.

13 (Proceedings concluded at 9:30 a.m.)

14 CERTIFICATE

15 I certify that the foregoing is a correct transcript from  
16 the record of proceedings in the above-entitled matter.

17 /s/ *Elia E. Carrión* 27th day of February, 2023

18 *Elia E. Carrión*  
19 Official Court Reporter

20 Date

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